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HOGAN & HARTSON LLP IP GROUP, COLUMBIA SQUARE 555 THIRTEENTH STREET, N.W. WASHINGTON, DC 20004				
EXAMINER				
OMOTOSHO, EMMANUEL				
ART UNIT		PAPER NUMBER		
3714				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/608,106

Applicant(s)

FOLEY ET AL.

Examiner

EMMANUEL OMOTOSHO

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2008.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 3-30 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-845)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/15/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,3-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papadopoulos (US 6,099,320) in view of Gupta et al. ("Gupta") US 2005/0192954 A1 and in further view of Griffor et al. ("Griffor") US 2002/0173999 A1, Cozens et al. ("Cozens") US 2002/0064766 A1 and Nourbakhsh et al. ("Nourbakhsh") US 2002/0143599 A1.

1. [Claims 1,3,15,18-21]: Regarding Claim 1, Papadopoulos teaches a content development platform, said content development platform containing electronic tools for receiving input relating to the compiling of instructional materials (i.e., audio, video, and textual content) (Col 2 lines 21-35) and generating electronic learning content (i.e., computer-based training modules). Papadopoulos teaches an electronic delivery platform (i.e., Virtual Training Center), said electronic delivery platform containing electronic tools for delivering instruction to the students, said delivered instruction incorporating said electronic learning content. See Col.2 lines 38-47, Col.8: 1-13.
2. Papadopoulos teaches a learning administration platform, said learning administration platform containing electronic tools (e.g., VIP directory) for storing said

electronic learning content, storing registrar information regarding said students and said instruction (e.g., courses that the student has completed), and storing catalog information (e.g., curriculum) regarding said learning content. See Col.5 lines 35-50, Col.8: 1-6. Papadopoulos teaches a resources synchronization platform (i.e., Virtual Training Center), said resources synchronization platform including a resources synchronization tool adapted to obtain and store data regarding compilation and generation functions as performed by said content development platform, data regarding delivery functions as performed by said delivery platform, said registrar information and said catalog information from said learning administration platform; wherein said resources synchronization tool provides an interface for accessing and processing said stored compilation data, generation data, delivery data, registrar information and catalog information upon request. See Col.5 lines 35-50, Col.8: 1-6.

3. Papadopoulos does not expressly teach said synchronization tool processing said accessible data and information into resource utilization reports on demand such that said reports may be utilized to make resource allocation decisions across said learning services providing entity.

However, generating resource utilization reports from accessible data and information on demand is old and well known in the art.

Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into Papadopoulos' invention in order to make efficient use of resources.

4. In regards to claim 8, Papadopoulos teaches organizing allocation and scheduling information into sortable scheduling and usage reports (Col. 7 lines 34-40).
5. In regards to claim 9, Papadopoulos teaches reports may support learning solution processes selected from the group consisting of forecasting budgeting, performance planning, performance reporting, account management, production management, media configuration, delivery coordination, and needs analysis (Col 7 lines 60-67).
6. In regards to claims 10,17,26, Papadopoulos teaches the learning solution is able to be outsourced from a learner organization (School/business entity) to said learning services providing entity (Administrators) according to a learning services agreement (the curriculum), said agreement detailing minimum service levels that must be met by said providing entity (inherent in the curriculum) (Col.7 lines 28-67)

Papadopoulos does not expressly teach electronic delivery platform is adapted to record performance metrics during delivery of said instruction, during compilation of instructional materials and during generation of electronic learning content and wherein said performance metrics measure aspects of said compilation, said generation, and said delivery.

However in a similar network system learning solution invention, Gupta teaches a delivery system capable of recording performance metrics (Par. 0018), the use of a database to store such information (Fig 3, Fig 4 Par. 0129), presenting the information to the teacher/supervisor (Par. 0129) wherein Gupta teaches a form of presentation to

be of a report format (Par. 0013) (Claims 1-4,15-16,18-21,25). The following interpretations are being made:

- Compilation of instructional materials – the compilation of the materials that is inherently done before generating the specific materials that would be delivered to the user
- Generation of the learning content – the generation of the specific materials that would be delivered to the user
- Delivering instruction materials – delivering the instructional materials to the user

7. In regards to claim 6, said performance metrics data is accessible (through the database Par. 0129) by resources synchronization tool in substantially real time.

8. In regards to claims 7, 23-34, Gupta teaches an electronic interface for allocating the utilization of constrained learning resources subject to relevant instructor and student availabilities (Par. 0090, 0091, 00130, 0134)

9. Papadopoulos as modified by Gupta did not specifically teach the performance metrics defined according to the identified business goals and strategies of the organization as disclose in claims 11 and 27. However, defining the performance goals according to the organization's goals and strategies is inherent and well known in the art. After all, it is with the organization's goals and strategies in mind that the metrics are developed in the first place. Nonetheless, if the applicant wishes to contend that this is well known in the art, the applicant should respectfully note the Griffor reference that shows this feature to be old in the art (Griffor Par. 0015).

10. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to include performance metrics defined according to the organizations business goals and strategies. The motivation comes from Griffor Par. 0015 where it states that *By focusing all resource allocation and development on achieving the organizational goals of the organization, it provides aligned metrics for measuring the difference between the competencies required by the organization's strategic plans and the skill based resources available in its participants.*

11. Papadopoulos does not expressly teach content development platform is adapted to record performance metrics. Papadopoulos also fails to teach that the platform is adapted to record performance metrics during the authoring of instructional materials and generation of electronic learning content by course authors. The word "authoring" is interpreted as the user designing and developing course materials for the students. Thus, as shown above, Gupta teaches a system that record performance metrics. As also shown above, Papadopoulos teaches that the solution incorporates processes selected from the group consisting of forecasting budgeting, performance planning, performance reporting, account management, production management, media configuration, delivery coordination, and needs analysis. The course offered and the materials required for the courses are all part of the budget and accounting processes.

12. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to have the content

development platform record performance metrics defined according to the organizations business goals and strategies during the authoring of instructional materials and generation of electronic learning content by course authors. The motivation comes from the above cited Gupta and Papadopoulos references and also from Griffor Par. 0015 where it states that *By focusing all resource allocation and development on achieving the organizational goals of the organization, it provides aligned metrics for measuring the difference between the competencies required by the organization's strategic plans and the skill based resources available in its participants.*

13. In regards to claims 5,12,22 and 28, Papadopoulos as modified by Gupta did not specifically show a development ratio in light of costs and man-hours/elapsed time.

However, Nourbakhsh shows this feature to be old in the art (Nourbakhsh Par. 0045).

14. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to include Nourbakhsh developmental ratio (which is in light of expended costs and man-hours/elapsed time) for budget planning and revision.

15. The motivation comes from Nourbakhsh Par 0045 where it states *the budget computation allows changes to the budget model mid-year in a single plan.*

16. In regards to claim 13-14,29-30, although they disclose recording the learning cost, Papadopoulos as modified by Gupta did not specifically teach learning costs allocated and billed to appropriate business units. However, Cozens shows this feature to be old in the art (Abstract, Par. 0197).

17. Therefore it would have been obvious to one of ordinary skilled in the art at the time of the invention to combine the references to include learning costs allocated and billed to appropriate business units. The motivation comes from Cozens Abstract where it states that the invention *presents a global solution for large companies to manage a global employee-training program by providing a centralized database, automated fault-tolerant notification, and flexible HTML-based user interfaces.*

18. In regards to claims 14 and 30 applicant should respectfully note that establishing a cost schedule in which tasks performed are broken down by charges is inherent in providing a learning system cost. For this is how cost are calculated, as in the total charges for each work done is tallied up and total cost is calculated.

Response to Arguments

19. Applicant's arguments filed 11/02/07 have been considered but they are not persuasive.

20. On page 15, applicant argues, "Applicant submits that Papadopoulos likewise fails to disclose teach, or suggest any type of platform adapted to perform content development functions, and thus likewise fails to disclose a platform adapted to record performance metrics during compilation of instructional materials. In contrast, claim 1 and claim 15 as amended herein require the integration of both an electronic delivery platform and a content development platform by the resources synchronization tool. These limitations, in conjunction with various other language present in those claims, clarify how the Office Action's analysis quoted above is inaccurate."

21. The examiner respectfully disagrees. Fig 15 of Papadopoulos teaches such integration.

22. On pages 15-16, applicant argues, *"Applicant disagrees with the Office Action's italicized characterization above that since Gupta allegedly teaches a delivery system that records performance metrics during delivery of content, it inherently also teaches a "content development platform containing electronic tools for receiving input relating to the compiling of instructional materials and generating electronic learning content" as recited in Applicant's claims. The differences between a content development platform (as described in Applicant's specification with respect to element 410 of FIG. 4), which has tools that enable an instructor to compile and generate instruction materials, and an electronic delivery platform (element 430 of FIG. 4), which transmits the already compiled and generated materials and content to end users, are made apparent by Applicant's specification, are recited explicitly in Applicant's present claims, and will be readily appreciated by one skilled in the art. Even if the delivery of pre-existing materials is disclosed by Gupta, the Examiner cannot summarily conclude that Gupta inherently (i.e., necessarily and invariably per the standard required by In re Rijckaert, 9 F.3d 1531, 1534 (Fed. Cir. 1993) and MPEP sec. 2112.) discloses the compilation and generation of materials and content, let alone the collection of any metrics data during the compilation and generation. Close examination of Gupta shows that Gupta is concerned on/v with the electronic delivery of pre-existing content and materials to students. Any performance metrics recorded by Gupta are thus collected solely by an electronic content delivery system and relate solely to measuring data incidental to delivery of pre-existing content to students (e.g., what content to which students, electronic test scores, etc.). The specific portion of Gupta cited by the Office Action is particularly instructive of this point."*

23. The examiner respectfully disagrees. The examiner should point out once again that Gupta is relied upon for its teachings of a delivery system capable of recording performance metrics with use of a database to store such information, presenting the information to the teacher/supervisor wherein Gupta teaches a form of presentation to

be of a report format. The examiner made the interpretation that for Gupta delivery system to be able present a specific material to a user, the said material first has to be requested for by the user, after such request, the system will then gather and generate (i.e. compile) the requested information and present it to the user. A delivery system, specifically a system involving the use of a database, cannot present/deliver data to a user without compiling the data first. Furthermore, the said delivery system would be unable to present any requested data to a user without generating the requested data first. If a delivery system does not generate and compile requested data, there would be no data to deliver.

24. On page 17, applicant argues, *"Further, none of Papadopoulos, Gupta, or remaining prior art references of record (namely Griffor, Cozens, and Seetharaman) describe a synchronization tool for collecting performance metrics that measure aspects of compilation, generation, and delivery, and then using such metrics for the preparation of cost allocation reports that reflect all aspects of an end-to-end learning solution (development and delivery) as recited in Applicant's claims. Mere allegations by the Office Action that cost allocations are known (e.g., with reference to Cozens) or that development ratios can be tracked (e.g., with reference to Seetharaman) does not provide a basis for concluding that one of ordinary skill in the art would find obvious Applicant's recited novel systems for integrating disparate aspects of a learning solution. The fact that none of the five references of record attempt such a solution weighs against such a conclusion. The synchronization tool captures, integrates and reports performance indicators across a learning organization's key functional units (e.g., content development, delivery of content and instruction, and learning solution administration) to administrators that can make decisions from a business strategy alignment perspective. Thus, the performance indicators can include, for example, measurements of the output of a learning solution (e.g., instructional course-hours developed or delivered, hours or resources expended in development, and combinations thereof), measurements of performance level of learning efforts provided by the learning solution (e.g., student satisfaction, test*

and/or certification results), and measurements of the business impact of learning efforts (e.g., improvements in employee productivity following training). See Spec. at par. [0017] through [0021]. The performance indicator data is assembled and compiled automatically by the synchronization tool into reports that may be made available to administrators of a learning solution to create useful cost; resource usage, and learning effort success/failure reports. Where an organization's learning solution includes the use of an independent business entity according to a service level agreement, for example, the reports can focus on key metrics defined in the agreement and be utilized to track and allocate costs. See Spec. at par. [0024] and [0026]. The prior art fully lacks this capability, and thus does not render Applicant's claimed invention obvious"

25. However, applicant should respectfully note that the features pointed to in par 0017,0021, 0024 and 0026 are not recited in the rejected claim(s). The current claim language were given there broadest and reasonable interpretation. If applicant believes that the limitations recited in the said paragraphs holds patentable weight, applicant is advised to put such limitation in the claim language. The current claims are interpreted in light of the specification, however, the limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Response to Arguments

26. Applicant's arguments filed 4/25/08 have been fully considered but they are not persuasive. The arguments relate to the amendments filed 4/25/08. Please see expanded paragraphs 11-12 above which addresses these limitations.

Response to Arguments

27. Applicant's arguments filed 11/20/08 have been fully considered but they are not persuasive.

28. On page 3, applicant argues, "Attempting to supply this teaching, the Office Action states that Gupta "teaches a delivery system capable of recording performance metrics" (Office Action par. 6)(emphasis added). While Gupta has very limited discussion of content development, the performance metrics collected focus entirely on the delivery of content. For example, in paragraph 6 of the Office action, reference is made to Gupta stating that "[v]arious performance metrics are recorded during user interaction." (Gupta par 0018) (emphasis added). This user interaction necessarily relates to the delivery of content rather than the authoring of content. This is immediately clear when one considers that Gupta states that the "invention relates to delivering adaptive content to a user." (Gupta Abstract). However, to further clarify that these metrics are recorded only during content delivery, Gupta gives examples of these performance metrics such as "number of attempts to answer a question, whether the question was answered correctly, and reaction time between being presented the question and when the question was answered." (Gupta par. 0018)"

29. Please see par 6 and 11 above.

30. On page 4, applicant argues, "The only discussion of actual development, which is essentially limited to "expand[ing] the question base and assign[ing] specific topics," makes no mention of recording any performance metrics during this process. (Gupta par. 0186). Indeed, it states that it uses the "user interaction data from the delivery environment" to craft the new content. Id. (emphasis added). That Gupta is the only source relied upon by the Office for teaching these performance metrics, and yet it

makes no mention of recording these metrics during authoring of content would seem to teach away from any implication that such a functionality is obvious."

31. However, as clearly shown in par 11 above, Gupta is being relied upon for teaching recording performance metrics. As also shown above, Papadopoulos teaches that the solution incorporates processes selected from the group consisting of forecasting budgeting, performance planning, performance reporting, account management, production management, media configuration, delivery coordination, and needs analysis. Thus to record performance metrics during the authoring of the content would have been obvious, after all, the course offered (i.e. the authored contents) and the materials required for the courses are all part of the budget and accounting processes.

32. On pages 5-6, applicant argues, "The Office has also incorrectly relied on Papadopoulos in determining that claims 10, 17, and 26 do not distinguish over the prior art. The Office incorrectly determines that Papadopoulos teaches the learning solution is able to be outsourced from a learner organization to a learning entity. Papadopoulos makes no mention of outsourcing. Nevertheless, without support, the Office attempts to equate its "school" to an outsourcing learner organization, the "administrators" to the learning services providing entity, and the "curriculum" to the learning services agreement. These analogies to the requirements in claims 10, 17, and 26 display an apparent misunderstanding of what a learning solution is. Element 100 of Figure 1 in Applicant's specification shows an embodiment of one type of learning solution. This solution contains content creation, content delivery, and content administration. As

stated in Applicant's claim 10, it is from the learning solution's content development platform, electronic delivery platform, and learning administration platform that performances metrics are collected to gauge whether the minimum service levels have been met. As such, it is inappropriate to equate the "school" in Papadopoulos to an outsourcing learner organization, when that "school" is providing some of the very services that the outsourcing learner organization is outsourcing."

33. Once again, it seems that applicant is relying on limitations found in the specification/drawings but not specifically claimed in the current claim language. However, the claims were given there broadest and reasonable interpretation. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

34. On pages 6-7, applicant argues, "The Office has also incorrectly relied on Seetharaman in rejecting claims 5, 12, 22, and 28. Because there is no common inventor between Seetharaman and its parent application, Seetharaman is not entitled to relate back to the date of the parent application. Since the effective date of Seetharaman is September 28, 2006, it is not prior art."

35. Seetharaman was cited 5/2/07. More than a year and two office actions later, applicant decides to argue for the disqualification of Seetharaman as a reference. It is unclear why this argument is being presented at the final stage. However, the examiner has re-opened the case in light of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EMMANUEL OMOTOSHO whose telephone number is (571)272-3106. The examiner can normally be reached on m-f 10-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EO

/Ronald Laneau/
Primary Examiner, Art Unit 3714
02/27/09